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13 UNITED STATES DISTRICT COURT

14 CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION
15

16 MEGAN SCHMITT, DEANA
17 REILLY, CAROL ORLOWSKY, and
STEPHANIE MILLER BRUN,
18 individually and on behalf of
themselves and all others similarly
19 situated,

20 Plaintiffs,

21 v.

22 YOUNIQUE, LLC

23 Defendant.
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27
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Case No. 8:17-cv-01397-JVS-JDE

**DEFENDANT YOUNIQUE, LLC'S
ANSWER TO SECOND AMENDED
CLASS ACTION COMPLAINT**

The Hon. James V. Selna
Santa Ana, Courtroom 10C

SACC filed: January 4, 2018
Trial Date: February 19, 2019

1 Defendant Younique, LLC (“Younique”), by and through its attorneys, states
2 as follows in answer to Plaintiffs’ Second Amended Class Action Complaint
3 (“SAC”):

4 1. Answering paragraph 1 of Plaintiffs’ SAC, Younique denies the
5 allegations.

6 2. Answering paragraph 2 of Plaintiffs’ SAC, Younique admits that, from
7 approximately late 2012 to mid-2015, the product packaging for Younique
8 Moodstruck 3D Fiber Lashes (the “Mascara”) included the language “Natural
9 Fibers” and “100% Natural Green Tea Fibers.” Except as so admitted, Younique
10 denies the allegations.

11 3. Answering paragraph 3 of Plaintiffs’ SAC, Younique admits that the
12 Mascara is designed to enhance the appearance of eyelashes. Younique admits that
13 the Mascara consisted of two components, a tube of transplanting gel and a tube of
14 fibers. Except as so admitted, Younique denies the allegations.

15 4. Answering paragraph 4 of Plaintiffs’ SAC, Younique denies the
16 allegations.

17 5. Answering paragraph 5 of Plaintiffs’ SAC, Younique lacks knowledge
18 or information sufficient to form a belief about the truth of the allegations and,
19 therefore, denies the allegations.

20 6. Answering paragraph 6 of Plaintiffs’ SAC, Younique admits that
21 Plaintiffs purport to bring this action on behalf of certain purchasers of the Mascara.
22 Except as so admitted, Younique denies the allegations.

23 7. Answering paragraph 7 of Plaintiffs’ SAC, Younique lacks knowledge
24 or information sufficient to form a belief about the truth of the allegations and,
25 therefore, denies the allegations.

26 8. Answering paragraph 8 of Plaintiffs’ SAC, Younique admits that the
27 Mascara consisted of two components, a tube of transplanting gel and a tube of
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1 fibers. Younique admits that from approximately late 2012 to mid-2015, the
2 Mascara's packaging included the language "Natural Fibers" and "100% Natural
3 Green Tea Fibers." Except as so admitted, Younique denies the allegations.

4 9. Answering paragraph 9 of Plaintiffs' SAC, Younique denies the
5 allegations.

6 10. Answering paragraph 10 of Plaintiffs' SAC, Younique lacks knowledge
7 or information sufficient to form a belief about the truth of the allegations and,
8 therefore, denies the allegations.

9 11. Answering paragraph 11 of Plaintiffs' SAC, Younique denies the
10 allegations on the ground that they call for a legal conclusion.

11 12. Answering paragraph 12 of Plaintiffs' SAC, Younique lacks knowledge
12 or information sufficient to form a belief about the truth of the allegations and,
13 therefore, denies the allegations.

14 13. Answering paragraph 13 of Plaintiffs' SAC, Younique lacks knowledge
15 or information sufficient to form a belief about the truth of the allegations and,
16 therefore, denies the allegations.

17 14. Answering paragraph 14 of Plaintiffs' SAC, Younique denies the
18 allegations on the ground that they call for a legal conclusion.

19 15. Answering paragraph 15 of Plaintiffs' SAC, Younique denies the
20 allegations on the ground that they call for a legal conclusion.

21 16. Answering paragraph 16 of Plaintiffs' SAC, Younique lacks knowledge
22 or information sufficient to form a belief about the truth of the allegations and,
23 therefore, denies the allegations.

24 17. Answering paragraph 17 of Plaintiffs' SAC, Younique admits that any
25 "Draft Guidance Decision Tree for Classification of Materials as Synthetic or
26 Nonsynthetic (Natural)," issued by the United States Department of Agriculture in
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1 2013, would speak for itself. Except as so admitted, Younique denies the
2 allegations.

3 18. Answering paragraph 18 of Plaintiffs' SAC, Younique admits that 7
4 U.S.C. § 6502 (21) speaks for itself. Except as so admitted, Younique denies the
5 allegations.

6 19. Answering paragraph 19 of Plaintiffs' SAC, Younique denies the
7 allegations.

8 20. Answering paragraph 20 of Plaintiffs' SAC, Younique lacks knowledge
9 or information sufficient to form a belief about the truth of the allegations and,
10 therefore, denies the allegations.

11 21. Answering paragraph 21 of Plaintiffs' SAC, Younique lacks knowledge
12 or information sufficient to form a belief about the truth of the allegations and,
13 therefore, denies the allegations.

14 22. Answering paragraph 22 of Plaintiffs' SAC, Younique denies the
15 allegations.

16 23. Answering paragraph 23 of Plaintiffs' SAC, Younique denies the
17 allegations.

18 24. Answering paragraph 24 of Plaintiffs' SAC, Younique denies the
19 allegations.

20 25. Answering paragraph 25 of Plaintiffs' SAC, Younique denies the
21 allegations.

22 26. Answering paragraph 26 of Plaintiffs' SAC, Younique denies the
23 allegations.

24 27. Answering paragraph 27 of Plaintiffs' SAC, Younique denies the
25 allegations.

26 28. Answering paragraph 28 of Plaintiffs' SAC, Younique denies the
27 allegations.

1 29. Answering paragraph 29 of Plaintiffs' SAC, Yunique admits that
2 jurisdiction in this Court is proper, that Yunique's principal place of business is in
3 Lehi, Utah, and that Plaintiffs seek more than \$5,000,000 on behalf of the putative
4 class. Except as so admitted, Yunique denies the allegations.

5 30. Answering paragraph 30 of Plaintiffs' SAC, Yunique admits that
6 jurisdiction in this Court is proper and that Yunique conducts business and sells
7 products within the State of California. Except as so admitted, Yunique lacks
8 knowledge or information sufficient to form a belief about the truth of the
9 allegations and, therefore, denies the allegations.

10 31. Answering paragraph 31 of Plaintiffs' SAC, Yunique admits that
11 venue in this district is proper. Except as so admitted, Yunique denies the
12 allegations.

13 32. Answering paragraph 32 of Plaintiffs' SAC, Yunique admits that its
14 records show that plaintiff Schmitt purchased one order of the Mascara for \$29
15 (before tax and shipping) and it was delivered to California. Except as so admitted,
16 Yunique lacks knowledge or information sufficient to form a belief about the truth
17 of the allegations and, therefore, denies the allegations.

18 33. Answering paragraph 33 of Plaintiffs' SAC, Yunique lacks knowledge
19 or information sufficient to form a belief about the truth of the allegations and,
20 therefore, denies the allegations.

21 34. Answering paragraph 34 of Plaintiffs' SAC, Yunique lacks knowledge
22 or information sufficient to form a belief about the truth of the allegations and,
23 therefore, denies the allegations.

24 35. Answering paragraph 35 of Plaintiffs' SAC, Yunique denies the
25 allegations.

26 36. Answering paragraph 36 of Plaintiffs' SAC, Yunique admits that its
27 records show that plaintiff Reilly purchased one order of the Mascara and it was
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1 delivered to Florida. Except as so admitted, Yunique lacks knowledge or
2 information sufficient to form a belief about the truth of the allegations and,
3 therefore, denies the allegations.

4 37. Answering paragraph 37 of Plaintiffs' SAC, Yunique lacks knowledge
5 or information sufficient to form a belief about the truth of the allegations and,
6 therefore, denies the allegations.

7 38. Answering paragraph 38 of Plaintiffs' SAC, Yunique lacks knowledge
8 or information sufficient to form a belief about the truth of the allegations and,
9 therefore, denies the allegations.

10 39. Answering paragraph 39 of Plaintiffs' SAC, Yunique denies the
11 allegations.

12 40. Answering paragraph 40 of Plaintiffs' SAC, Yunique admits that its
13 records show that the Mascara was delivered to plaintiff Brun at an Ohio address.
14 Except as so admitted, Yunique lacks knowledge or information sufficient to form
15 a belief about the truth of the allegations and, therefore, denies the allegations.

16 41. Answering paragraph 41 of Plaintiffs' SAC, Yunique lacks knowledge
17 or information sufficient to form a belief about the truth of the allegations and,
18 therefore, denies the allegations.

19 42. Answering paragraph 42 of Plaintiffs' SAC, Yunique lacks knowledge
20 or information sufficient to form a belief about the truth of the allegations and,
21 therefore, denies the allegations.

22 43. Answering paragraph 43 of Plaintiffs' SAC, Yunique denies the
23 allegations.

24 44. Answering paragraph 44 of Plaintiffs' SAC, Yunique lacks knowledge
25 or information sufficient to form a belief about the truth of the allegations and,
26 therefore, denies the allegations.

1 45. Answering paragraph 45 of Plaintiffs' SAC, Yunique lacks knowledge
2 or information sufficient to form a belief about the truth of the allegations and,
3 therefore, denies the allegations.

4 46. Answering paragraph 46 of Plaintiffs' SAC, Yunique lacks knowledge
5 or information sufficient to form a belief about the truth of the allegations and,
6 therefore, denies the allegations.

7 47. Answering paragraph 47 of Plaintiffs' SAC, Yunique denies the
8 allegations.

9 48. Answering paragraph 48 of Plaintiffs' SAC, Yunique admits that it is
10 a Utah limited liability company with its principal place of business in Lehi, Utah.
11 Yunique admits that in 2017 Coty Inc. acquired a 60% stake in Yunique for
12 approximately \$600 million. Yunique admits that it currently operates as a
13 separate business within Coty's Consumer Beauty division. Except as so admitted,
14 Yunique denies the allegations.

15 49. Answering paragraph 49 of Plaintiffs' SAC, Yunique admits that
16 Plaintiffs purport to bring a putative class action lawsuit. Except as so admitted,
17 Yunique denies the allegations.

18 50. Answering paragraph 50 of Plaintiffs' SAC, Yunique admits that
19 Plaintiffs purport to bring this action on behalf of the putative class described in the
20 paragraph. Except as so admitted, Yunique denies the allegations.

21 51. Answering paragraph 51 of Plaintiffs' SAC, Yunique admits that
22 Plaintiffs purport to bring this action on behalf of the putative subclasses described
23 in the paragraph. Except as so admitted, Yunique denies the allegations.

24 52. Answering paragraph 52 of Plaintiffs' SAC, Yunique denies the
25 allegations.

26 53. Answering paragraph 53 of Plaintiffs' SAC, Yunique denies the
27 allegations.

1 54. Answering paragraph 54 of Plaintiffs' SAC, Younique denies the
2 allegations.

3 55. Answering paragraph 55 of Plaintiffs' SAC, Younique denies the
4 allegations.

5 56. Answering paragraph 56 of Plaintiffs' SAC, Younique denies the
6 allegations.

7 57. Answering paragraph 57 of Plaintiffs' SAC, Younique denies the
8 allegations.

9 58. Answering paragraph 58 of Plaintiffs' SAC, Younique denies the
10 allegations.

11 59. Answering paragraph 59 of Plaintiffs' SAC, Younique denies the
12 allegations.

13 60. Answering paragraph 60 of Plaintiffs' SAC, Younique incorporates by
14 reference its responses to paragraphs 1-59 above.

15 61. Answering paragraph 61 of Plaintiffs' SAC, Younique admits that
16 plaintiffs Schmitt, Brun and Orlowsky purport to bring this action on behalf of
17 themselves and members of a putative class. Except as so admitted, Younique
18 denies the allegations.

19 62. Answering paragraph 62 of Plaintiffs' SAC, Younique admits that the
20 Magnum-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*, speaks for itself. Except as
21 so admitted, Younique denies the allegations.

22 63. Answering paragraph 63 of Plaintiffs' SAC, Younique denies the
23 allegations on the ground that they call for a legal conclusion.

24 64. Answering paragraph 64 of Plaintiffs' SAC, Younique denies the
25 allegations on the ground that they call for a legal conclusion.

26 65. Answering paragraph 65 of Plaintiffs' SAC, Younique denies the
27 allegations on the ground that they call for a legal conclusion.

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1 66. Answering paragraph 66 of Plaintiffs' SAC, Yunique denies the
2 allegations on the ground that they call for a legal conclusion.

3 67. Answering paragraph 67 of Plaintiffs' SAC, Yunique admits that from
4 approximately late 2012 to mid-2015, the Mascara's packaging included the
5 language "Natural Fibers" and "100% Natural Green Tea Fibers." Except as so
6 admitted, Yunique denies the allegations.

7 68. Answering paragraph 68 of Plaintiffs' SAC, Yunique denies the
8 allegations.

9 69. Answering paragraph 69 of Plaintiffs' SAC, Yunique denies the
10 allegations.

11 70. Answering paragraph 70 of Plaintiffs' SAC, Yunique denies the
12 allegations.

13 71. Answering paragraph 71 of Plaintiffs' SAC, Yunique incorporates by
14 reference its responses to paragraphs 1-70 above.

15 72. Answering paragraph 72 of Plaintiffs' SAC, Yunique denies the
16 allegations.

17 73. Answering paragraph 73 of Plaintiffs' SAC, Yunique denies the
18 allegations.

19 74. Answering paragraph 74 of Plaintiffs' SAC, Yunique denies the
20 allegations.

21 75. Answering paragraph 75 of Plaintiffs' SAC, Yunique denies the
22 allegations.

23 76. Answering paragraph 76 of Plaintiffs' SAC, Yunique denies the
24 allegations.

25 77. Answering paragraph 77 of Plaintiffs' SAC, Yunique denies the
26 allegations.

1 78. Answering paragraph 78 of Plaintiffs' SAC, Younique denies the
2 allegations.

3 79. Answering paragraph 79 of Plaintiffs' SAC, Younique incorporates by
4 reference its responses to paragraphs 1-78 above.

5 80. Answering paragraph 80 of Plaintiffs' SAC, Younique admits that the
6 Consumers Legal Remedies Act ("CLRA"), Cal. Civil Code §§ 1750 *et seq.*, speaks
7 for itself. Except as so admitted, Younique denies the allegations.

8 81. Answering paragraph 81 of Plaintiffs' SAC, Younique denies the
9 allegations on the ground that they call for a legal conclusion.

10 82. Answering paragraph 82 of Plaintiffs' SAC, Younique denies the
11 allegations on the ground that they call for a legal conclusion.

12 83. Answering paragraph 83 of Plaintiffs' SAC, Younique denies the
13 allegations on the ground that they call for a legal conclusion.

14 84. Answering paragraph 84 of Plaintiffs' SAC, Younique denies the
15 allegations.

16 85. Answering paragraph 85 of Plaintiffs' SAC, Younique denies the
17 allegations.

18 86. Answering paragraph 86 of Plaintiffs' SAC, Younique denies the
19 allegations.

20 87. Answering paragraph 87 of Plaintiffs' SAC, Younique denies the
21 allegations.

22 88. Answering paragraph 88 of Plaintiffs' SAC, Younique denies the
23 allegations.

24 89. Answering paragraph 89 of Plaintiffs' SAC, Younique lacks knowledge
25 or information sufficient to form a belief about the truth of the allegations and,
26 therefore, denies the allegations.

1 90. Answering paragraph 90 of Plaintiffs' SAC, Younique denies the
2 allegations.

3 91. Answering paragraph 91 of Plaintiffs' SAC, Younique admits that a
4 letter dated August 11, 2017 was sent to Younique on behalf of plaintiff Schmitt.
5 Except as so admitted, Younique denies the allegations.

6 92. Answering paragraph 92 of Plaintiffs' SAC, Younique admits that a
7 letter dated August 11, 2017 was sent to Younique on behalf of plaintiff Schmitt.
8 Except as so admitted, Younique denies the allegations.

9 93. Answering paragraph 93 of Plaintiffs' SAC, the allegations require no
10 response from Younique. To the extent a response is required, Younique admits
11 that plaintiff Schmitt purports to bring a cause of action for relief under the CLRA.
12 Except as so admitted, Younique denies the allegations.

13 94. Answering paragraph 94 of Plaintiffs' SAC, the allegations require no
14 response from Younique. To the extent a response is required, Younique admits
15 that plaintiff Schmitt purports to bring a cause of action for relief under the CLRA.
16 Except as so admitted, Younique denies the allegations.

17 95. Answering paragraph 95 of Plaintiffs' SAC, the allegations require no
18 response from Younique. To the extent a response is required, Younique admits
19 that plaintiff Schmitt purports to bring a cause of action for relief under the CLRA.
20 Except as so admitted, Younique denies the allegations.

21 96. Answering paragraph 96 of Plaintiffs' SAC, Younique incorporates by
22 reference its responses to paragraphs 1-95 above.

23 97. Answering paragraph 97 of Plaintiffs' SAC, Younique denies the
24 allegations on the ground that they call for a legal conclusion.

25 98. Answering paragraph 98 of Plaintiffs' SAC, Younique denies the
26 allegations on the ground that they call for a legal conclusion.

1 99. Answering paragraph 99 of Plaintiffs' SAC, Yunique admits that from
2 approximately late 2012 to mid-2015, the Mascara's packaging included the
3 language "Natural Fibers" and "100% Natural Green Tea Fibers." Except as so
4 admitted, Yunique denies the allegations.

5 100. Answering paragraph 100 of Plaintiffs' SAC, Yunique denies the
6 allegations.

7 101. Answering paragraph 101 of Plaintiffs' SAC, Yunique denies the
8 allegations.

9 102. Answering paragraph 102 of Plaintiffs' SAC, Yunique incorporates by
10 reference its responses to paragraphs 1-101 above.

11 103. Answering paragraph 103 of Plaintiffs' SAC, Yunique denies the
12 allegations on the ground that they call for a legal conclusion.

13 104. Answering paragraph 104 of Plaintiffs' SAC, Yunique denies the
14 allegations on the ground that they call for a legal conclusion.

15 105. Answering paragraph 105 of Plaintiffs' SAC, Yunique denies the
16 allegations on the ground that they call for a legal conclusion.

17 106. Answering paragraph 106 of Plaintiffs' SAC, Yunique admits that
18 California Commercial Code § 2314(2)(f) speaks for itself. Except as so admitted,
19 Yunique denies the allegations.

20 107. Answering paragraph 107 of Plaintiffs' SAC, Yunique admits that
21 from approximately late 2012 to mid-2015, the Mascara's packaging included the
22 language "Natural Fibers" and "100% Natural Green Tea Fibers." Except as so
23 admitted, Yunique denies the allegations.

24 108. Answering paragraph 108 of Plaintiffs' SAC, Yunique denies the
25 allegations.

1 109. Answering paragraph 109 of Plaintiffs' SAC, Younique admits that a
2 letter dated August 11, 2017 was sent to Younique on behalf of plaintiff Schmitt.
3 Except as so admitted, Younique denies the allegations.

4 110. Answering paragraph 110 of Plaintiffs' SAC, Younique denies the
5 allegations.

6 111. Answering paragraph 111 of Plaintiffs' SAC, Younique incorporates by
7 reference its responses to paragraphs 1-110 above.

8 112. Answering paragraph 112 of Plaintiffs' SAC, Younique denies the
9 allegations on the ground that they call for a legal conclusion.

10 113. Answering paragraph 113 of Plaintiffs' SAC, Younique denies the
11 allegations on the ground that they call for a legal conclusion.

12 114. Answering paragraph 114 of Plaintiffs' SAC, Younique admits that the
13 Florida Unfair and Deceptive Trade Practices Act at Fla. Stat. § 501.204(1) speaks
14 for itself. Except as so admitted, Younique denies the allegations.

15 115. Answering paragraph 115 of Plaintiffs' SAC, Younique denies the
16 allegations.

17 116. Answering paragraph 116 of Plaintiffs' SAC, Younique denies the
18 allegations.

19 117. Answering paragraph 117 of Plaintiffs' SAC, the allegations require no
20 response from Younique. To the extent a response is required, Younique admits
21 that plaintiff Reilly purports to bring a cause of action for relief under the Florida
22 Deceptive Trade Practices Act on behalf of herself and the putative subclass
23 described in the paragraph. Except as so admitted, Younique denies the allegations.

24 118. Answering paragraph 118 of Plaintiffs' SAC, Younique incorporates by
25 reference its responses to paragraphs 1-117 above.

1 119. Answering paragraph 119 of Plaintiffs' SAC, Younique admits that the
2 Ohio Consumer Sales Practice Act speaks for itself. Except as so admitted,
3 Younique denies the allegations.

4 120. Answering paragraph 120 of Plaintiffs' SAC, Younique denies the
5 allegations on the ground that they call for a legal conclusion.

6 121. Answering paragraph 121 of Plaintiffs' SAC, Younique denies the
7 allegations on the ground that they call for a legal conclusion.

8 122. Answering paragraph 122 of Plaintiffs' SAC, Younique denies the
9 allegations.

10 123. Answering paragraph 123 of Plaintiffs' SAC, Younique denies the
11 allegations.

12 124. Answering paragraph 124 of Plaintiffs' SAC, Younique denies the
13 allegations on the ground that they call for a legal conclusion.

14 125. Answering paragraph 125 of Plaintiffs' SAC, Younique admits that
15 Ohio Administrative Code section 109:4-3-10 speaks for itself. Except as so
16 admitted, Younique denies the allegations.

17 126. Answering paragraph 126 of Plaintiffs' SAC, Younique denies the
18 allegations on the ground that they call for a legal conclusion.

19 127. Answering paragraph 127 of Plaintiffs' SAC, the allegations require no
20 response from Younique. To the extent a response is required, Younique admits
21 that plaintiff Brun purports to bring a cause of action for relief under the Ohio
22 Consumer Sales Practices Act. Except as so admitted, Younique denies the
23 allegations.

24 128. Answering paragraph 128 of Plaintiffs' SAC, Younique incorporates by
25 reference its responses to paragraphs 1-127 above.

1 129. Answering paragraph 129 of Plaintiffs' SAC, Younique admits that the
2 Ohio Deceptive Trade Practices Act speaks for itself. Except as so admitted,
3 Younique denies the allegations.

4 130. Answering paragraph 130 of Plaintiffs' SAC, Younique denies the
5 allegations on the ground that they call for a legal conclusion.

6 131. Answering paragraph 131 of Plaintiffs' SAC, Younique denies the
7 allegations.

8 132. Answering paragraph 132 of Plaintiffs' SAC, Younique denies the
9 allegations.

10 133. Answering paragraph 133 of Plaintiffs' SAC, the allegations require no
11 response from Younique. To the extent a response is required, Younique admits
12 that plaintiff Brun purports to bring a cause of action for relief under the Ohio
13 Deceptive Trade Practices Act on behalf of herself and the putative subclass
14 described in the paragraph. Except as so admitted, Younique denies the allegations.

15 134. Answering paragraph 134 of Plaintiffs' SAC, Younique incorporates by
16 reference its responses to paragraphs 1-133 above.

17 135. Answering paragraph 135 of Plaintiffs' SAC, Younique denies the
18 allegations on the ground that they call for a legal conclusion.

19 136. Answering paragraph 136 of Plaintiffs' SAC, Younique denies the
20 allegations on the ground that they call for a legal conclusion.

21 137. Answering paragraph 137 of Plaintiffs' SAC, Younique admits that
22 from approximately late 2012 to mid-2015, the Mascara's packaging included the
23 language "Natural Fibers" and "100% Natural Green Tea Fibers." Except as so
24 admitted, Younique denies the allegations.

25 138. Answering paragraph 138 of Plaintiffs' SAC, Younique denies the
26 allegations.

1 139. Answering paragraph 139 of Plaintiffs' SAC, Younique denies the
2 allegations.

3 140. Answering paragraph 140 of Plaintiffs' SAC, Younique admits that a
4 letter dated August 11, 2017 was sent to Younique on behalf of plaintiff Schmitt.
5 Except as so admitted, Younique denies the allegations.

6 141. Answering paragraph 141 of Plaintiffs' SAC, Younique denies the
7 allegations.

8 142. Answering paragraph 142 of Plaintiffs' SAC, Younique incorporates by
9 reference its responses to paragraphs 1-141 above.

10 143. Answering paragraph 143 of Plaintiffs' SAC, Younique denies the
11 allegations on the ground that they call for a legal conclusion.

12 144. Answering paragraph 144 of Plaintiffs' SAC, Younique denies the
13 allegations on the ground that they call for a legal conclusion.

14 145. Answering paragraph 145 of Plaintiffs' SAC, Younique denies the
15 allegations on the ground that they call for a legal conclusion.

16 146. Answering paragraph 146 of Plaintiffs' SAC, Younique admits that
17 from approximately late 2012 to mid-2015, the Mascara's packaging included the
18 language "Natural Fibers" and "100% Natural Green Tea Fibers." Except as so
19 admitted, Younique denies the allegations.

20 147. Answering paragraph 147 of Plaintiffs' SAC, Younique denies the
21 allegations.

22 148. Answering paragraph 148 of Plaintiffs' SAC, Younique denies the
23 allegations.

24 149. Answering paragraph 149 of Plaintiffs' SAC, Younique admits that a
25 letter dated August 11, 2017 was sent to Younique on behalf of plaintiff Schmitt.
26 Except as so admitted, Younique denies the allegations.

1 150. Answering paragraph 150 of Plaintiffs' SAC, Younique denies the
2 allegations.

3 151. Answering paragraph 151 of Plaintiffs' SAC, Younique incorporates by
4 reference its responses to paragraphs 1-150 above.

5 152. Answering paragraph 152 of Plaintiffs' SAC, Younique denies the
6 allegations on the ground that they call for a legal conclusion.

7 153. Answering paragraph 153 of Plaintiffs' SAC, Younique denies the
8 allegations on the ground that they call for a legal conclusion.

9 154. Answering paragraph 154 of Plaintiffs' SAC, Younique denies the
10 allegations on the ground that they call for a legal conclusion.

11 155. Answering paragraph 155 of Plaintiffs' SAC, Younique admits that the
12 Tennessee Consumer Protection Act speaks for itself. Except as so admitted,
13 Younique denies the allegations.

14 156. Answering paragraph 156 of Plaintiffs' SAC, Younique denies the
15 allegations.

16 157. Answering paragraph 157 of Plaintiffs' SAC, Younique denies the
17 allegations.

18 158. Answering paragraph 158 of Plaintiffs' SAC, the allegations require no
19 response from Younique. To the extent a response is required, Younique admits
20 that plaintiff Orłowsky purports to bring a cause of action for relief under the
21 Tennessee Consumer Protection Act on behalf of herself and the putative subclass
22 described in the paragraph. Except as so admitted, Younique denies the allegations.

23 159. Answering paragraph 159 of Plaintiffs' SAC, Younique incorporates by
24 reference its responses to paragraphs 1-158 above.

25 160. Answering paragraph 160 of Plaintiffs' SAC, Younique denies the
26 allegations on the ground that they call for a legal conclusion.

1 161. Answering paragraph 161 of Plaintiffs' SAC, Younique denies the
2 allegations on the ground that they call for a legal conclusion.

3 162. Answering paragraph 162 of Plaintiffs' SAC, Younique admits that
4 from approximately late 2012 to mid-2015, the Mascara's packaging included the
5 language "Natural Fibers" and "100% Natural Green Tea Fibers." Except as so
6 admitted, Younique denies the allegations.

7 163. Answering paragraph 163 of Plaintiffs' SAC, Younique denies the
8 allegations.

9 164. Answering paragraph 164 of Plaintiffs' SAC, Younique denies the
10 allegations.

11 165. Answering paragraph 165 of Plaintiffs' SAC, Younique admits that a
12 letter dated August 11, 2017 was sent to Younique on behalf of plaintiff Schmitt.
13 Except as so admitted, Younique denies the allegations.

14 166. Answering paragraph 166 of Plaintiffs' SAC, Younique denies the
15 allegations.

16 167. Answering paragraph 167 of Plaintiffs' SAC, Younique incorporates by
17 reference its responses to paragraphs 1-166 above.

18 168. Answering paragraph 168 of Plaintiffs' SAC, Younique denies the
19 allegations on the ground that they call for a legal conclusion.

20 169. Answering paragraph 169 of Plaintiffs' SAC, Younique denies the
21 allegations on the ground that they call for a legal conclusion.

22 170. Answering paragraph 170 of Plaintiffs' SAC, Younique denies the
23 allegations on the ground that they call for a legal conclusion.

24 171. Answering paragraph 171 of Plaintiffs' SAC, Younique admits that
25 from approximately late 2012 to mid-2015, the Mascara's packaging included the
26 language "Natural Fibers" and "100% Natural Green Tea Fibers." Except as so
27 admitted, Younique denies the allegations.

1 172. Answering paragraph 172 of Plaintiffs' SAC, Younique denies the
2 allegations.

3 173. Answering paragraph 173 of Plaintiffs' SAC, Younique denies the
4 allegations.

5 174. Answering paragraph 174 of Plaintiffs' SAC, Younique admits that a
6 letter dated August 11, 2017 was sent to Younique on behalf of plaintiff Schmitt.
7 Except as so admitted, Younique denies the allegations.

8 175. Answering paragraph 175 of Plaintiffs' SAC, Younique denies the
9 allegations.

10 **AFFIRMATIVE DEFENSES**

11
12 BY WAY OF DEFENSES, and without conceding that it has the burden of
13 proof as to any of these matters, Younique alleges as follows:

14 **FIRST AFFIRMATIVE DEFENSE**

15 (Failure to State Facts Sufficient to Constitute a Cause of Action)

16 1. The SAC, and each of the purported causes of action asserted
17 therein, against Younique fails to state facts sufficient to constitute a cause of action
18 against Younique.
19

20 **SECOND AFFIRMATIVE DEFENSE**

21 (No Reasonable Consumer Deceived)

22 2. The SAC, and each of the purported causes of action asserted
23 therein, against Younique fails, in whole or in part, because the Mascara as
24 delivered met the needs and expectations of consumers and no reasonable consumer
25 would interpret the alleged communications and advertising in the manner Plaintiffs
26 allege or rely on them to their detriment.
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1 **THIRD AFFIRMATIVE DEFENSE**

2 (Statute of Limitations)

3 3. Plaintiffs' purported claims are barred, in whole or in part, to the
4 extent Plaintiffs seek relief for any purported claims, on their own behalf or on
5 behalf of others, that were not brought before the expiration of the applicable statute
6 of limitations, including but not limited to California Business and Professions Code
7 section 17208; California Code of Civil Procedure sections 338(a) and 338(d);
8 California Civil Code section 1783; California Commercial Code section 2725 (and
9 other states' equivalents); Fla. Stat. section 501.207; Ohio Rev. Code sections
10 1302.98, 1345.10(C) and 2305.09; Tenn. Code sections 47-18-110 and 47-2-725
11 and/or any other applicable statute(s) of limitations from other states not specifically
12 identified in the SAC.

13 **FOURTH AFFIRMATIVE DEFENSE**

14 (Lack of Standing)

15 4. The SAC, and each of the purported causes of action asserted
16 therein, against Younique fails, in whole or in part, because Plaintiffs and the
17 putative class and subclass members they purport to represent lack standing to
18 pursue their asserted claims. Among other things, Plaintiffs and the putative class
19 and subclass members should be barred from pursuing claims based upon
20 representations that they did not rely upon and therefore were not injured by.

21 **FIFTH AFFIRMATIVE DEFENSE**

22 (Compliance with Statutes, Regulations and/or Industry Standards)

23 5. To the extent that Younique engaged in any of the activities
24 alleged in the SAC, those activities were in compliance with, and pursuant to,
25 statutes, government regulations and/or industry standards in existence at the time of
26 the activities.

1 Younique asserts this affirmative defense on information and belief and because,
2 due to the sheer size and scope of the putative class and the lack of specificity in the
3 SAC, it is possible that one or more members of the putative class, including
4 Plaintiffs, have, by virtue of their delay, failed to mitigate any alleged damages.

5 **FOURTEENTH AFFIRMATIVE DEFENSE**

6 (Unjust Enrichment)

7 14. The SAC, and each of the purported causes of action asserted
8 therein, against Younique is barred, in whole or in part, on the ground that any
9 award or relief against Younique would result in unjust enrichment to the Plaintiffs
10 and the class.

11 **FIFTEENTH AFFIRMATIVE DEFENSE**

12 (Offset)

13 15. If any award or relief is entered against Younique, the recovery
14 must be offset by the value of the products furnished by Younique.

15 **SIXTEENTH AFFIRMATIVE DEFENSE**

16 (Class Action Requirements Not Met)

17 16. Plaintiffs cannot properly bring this case as a class action under
18 Federal Rule of Civil Procedure 23 because Plaintiffs cannot satisfy its
19 requirements. Individual questions of fact and law predominate over common
20 questions, Plaintiffs are not adequate class representatives, their claims are not
21 typical of those belonging to the alleged class members, many putative class
22 members (including certain named plaintiffs) have an arbitration forum pursuant to
23 which they can pursue alleged claims, and other class requirements cannot be
24 satisfied.

1 **SEVENTEENTH AFFIRMATIVE DEFENSE**

2 (Failure to Comply with CLRA)

3 17. Plaintiff Schmitt failed to comply with the Consumer Legal
4 Remedy Act, including but not limited to the provisions set forth in Section 1780
5 and 1782 thereof.

6 **EIGHTEENTH AFFIRMATIVE DEFENSE**

7 (No Entitlement to Punitive Damages)

8 18. Plaintiffs are not entitled to recover punitive damages, in whole
9 or in part, from Younique under applicable of law.

10 **NINETEENTH AFFIRMATIVE DEFENSE**

11 (Failure to Take Advantage of Preventative or Corrective Opportunities)

12 19. Plaintiffs unreasonably failed to take advantage of preventative
13 or corrective opportunities provided by Younique to avoid the alleged harm, if any,
14 including, but not limited to availing themselves of Younique's refund policy.

15 **TWENTIETH AFFIRMATIVE DEFENSE**

16 (Lack of Knowledge)

17 20. The SAC, and each of the purported causes of action asserted
18 therein, against Younique fails, in whole or part, because even assuming the truth of
19 Plaintiffs' claims, Younique did not know, nor should it have known, of the alleged
20 facts and conduct asserted therein.

21 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

22 (Lack of Particularity)

23 21. Plaintiffs have failed to allege their purported causes of action
24 with sufficient particularity to enable Younique to raise all appropriate defenses,
25 and, therefore, Younique reserves the right to assert additional defenses as the
26 factual basis for each becomes known. Further, the SAC, an each of the purported
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1 causes of action therein, against Younique is barred, in whole or part, on the
2 grounds that the SAC fails to describe the alleged fraud with requisite particularity.

3 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

4 (Entitlement to Attorneys' Fees)

5 22. The SAC, and each of the purported causes of action asserted
6 therein, against Younique is frivolous, vexatious and unreasonable, thereby entitling
7 Younique to an award of its reasonable attorneys' fees. *See, e.g.*, Fla. Stat. §
8 501.2105; Cal. Civ. Code 1780.

9 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

10 (No Reliance)

11 23. The SAC, and each of the purported causes of action asserted
12 therein, against Younique fails, in whole or in part, because Plaintiffs do not allege
13 any misrepresentations upon which they relied.

14 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

15 (No Materiality)

16 24. The SAC, and each of the purported causes of action asserted
17 therein, against Younique fails, in whole or in part, because the alleged
18 misrepresentations were not material to Plaintiffs and/or putative class members.

19 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

20 (No Damage Caused By Defendant)

21 25. The SAC, and each of the purported causes of action asserted therein,
22 against Younique fails, in whole or in part, because Plaintiffs and/or the putative
23 class members have not suffered any damages as a legal result of any alleged
24 conduct or omissions by Younique.

1 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

2 (Additional Defenses Against Unnamed Class Members and Reservation)

3 26. Younique may have additional defenses against the unnamed
4 members of the class that Plaintiffs purport to represent. Younique reserves the
5 right to assert additional defenses against the unnamed members of the class or
6 subclass that Plaintiffs purport to represent if a class or a subclass is certified against
7 Younique and as the factual basis for each additional defense becomes known.
8 Among other things, many putative class members have an arbitration forum
9 pursuant to which they can pursue alleged claims. Younique specifically reserves
10 the right to amend this Answer by way of adding additional defenses.

11 **DEMAND FOR JURY TRIAL**

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13 Younique hereby makes its demand for jury trial.

14 **PRAYER FOR RELIEF**

15
16 WHEREFORE, having answered Plaintiffs' SAC and having asserted
17 affirmative defenses, Younique prays for judgment as follows:

- 18 1. For dismissal of all claims and causes of action against Younique
19 alleged in Plaintiffs' SAC with prejudice;
- 20 2. For denial of certification of this matter as a class action;
- 21 3. For all costs and disbursements incurred in this litigation to the extent
22 they are available;

1 4. For legal fees incurred in this litigation to the extent they are available,
2 including under Fla. Stat. § 501.2105 (and other states' equivalents); and

3 5. For such other and further relief as the Court deems just and proper.

4
5 Dated: January 18, 2018

6 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

7
8 By

 /s/ Sascha Henry

SASCHA HENRY

JONATHAN D. MOSS

ABBY H. MEYER

Attorneys for Defendant Younique, LLC